

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	
	)	Docket Number
	)	
Willow Run Powertrain	)	
2930 Ecorse Road	)	SETTLEMENT AGREEMENT
Ypsilanti, Michigan	)	AND COVENANT NOT TO SUE
	)	UNDER THE AUTHORITY OF THE
	)	COMPREHENSIVE ENVIRONMENTAL
Willow Run Arsenal of	)	RESPONSE, COMPENSATION,
Democracy Landholdings	)	LIABILITY ACT OF 1980,
Limited Partnership,	)	
PURCHASER	)	
	)	
AND	)	42 U.S.C. § 9601 <i>et seq.</i> , AS AMENDED, AND
	)	THE SOLID WASTE DISPOSAL ACT,
American Center for Mobility,	)	42 U.S.C § 6901, <i>et seq.</i> , AS AMENDED
LESSEE	)	
	)	

**I. INTRODUCTION**

1. This Settlement Agreement and Covenant Not to Sue ("Settlement Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA"), the Willow Run Arsenal of Democracy Landholdings Limited Partnership ("WRAD") ("the Purchaser") and the American Center for Mobility ("ACM") ("the Lessee"). All three are collectively referred to as "the Parties." WRAD, and ACM are collectively referred to as "the Settling Parties." This Settlement Agreement relates to the Willow Run Powertrain Site, located in the Township of Ypsilanti, Michigan.

2. This Settlement Agreement is entered into pursuant to (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, and (2) the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6901, *et seq.* The authority of the Administrator of EPA has been delegated to the Regional Administrators of EPA, and further delegated to the Director, Superfund Division, Region 5 and the Director, Land and Chemicals Division, Region 5. The Settling Parties consent to and will not object to the United States' jurisdiction to enter into this Settlement Agreement or implement its provisions.

3. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Settlement Agreement pursuant to the authority of the Attorney General to settle claims of the United States, which, in the circumstances of this settlement, has been delegated to the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division.

4. The Settlement Agreement is also subject to the terms of the Environmental Response Trust Consent Decree and Settlement Agreement entered by the United States Bankruptcy Court for the Southern District of New York in *In re: Motors Liquidation Company, et al.*, f/k/a

*General Motors Corp., et al.*, Case No. 09-50026 (REG) (“the General Motors Consent Decree” or “Consent Decree”) (*See* Appendix 1). Under the terms of the Consent Decree, certain properties and other assets of General Motors Corp., including the Site, were placed into the Revitalizing Auto Communities Environmental Response (“RACER”) Trust, an environmental response trust, in order to be cleaned up and positioned for redevelopment. The provisions of this Settlement Agreement rely on the unique facts and circumstances of the General Motors Consent Decree, and nothing in this Settlement Agreement shall be treated as having any precedential value in any other agreements between EPA and prospective purchasers of sites that may be subject to the requirements of CERCLA and/or RCRA.

5. The Site is currently owned by RACER Properties LLC, a wholly owned affiliate of the RACER Trust, and, due to the unique circumstances of the General Motors Corp. bankruptcy matter, if a prospective purchaser of sites subject to the General Motors Consent Decree determines that other statutory protections are not sufficient to address its liability concerns, Paragraph 69 of the General Motors Consent Decree provides that EPA shall select a liability clarification tool, including entering into prospective purchaser agreements, in order to address the liability concerns of prospective purchasers regarding the existing contamination on sites formerly owned by the General Motors Corp.

6. The Site is the Willow Run Powertrain Site - EPA ID# MID 980 587 893 (RCRA Corrective Action), in Ypsilanti, Michigan, and consists of approximately 313 acres of land that was formerly occupied by General Motors Corp. The Purchaser plans to acquire the Site which is depicted in Appendix 2 (“the Site”).

7. The Purchaser, Willow Run Arsenal of Democracy Landholdings Limited Partnership, is a Michigan Limited Partnership. WRAD will purchase the Site and then will enter into a ground lease or a similar arrangement with the Lessee, American Center for Mobility, a Michigan non-profit corporation. ACM will act as a developer and operator of the Site. The Settling Parties intend to redevelop the Site for constructing and operating a national Connected and Autonomous Vehicle (CAV) research, testing, standards, product development, validation, and certification facility. The planned facility would meet the U.S. national need for a CAV facility and would be able to have a wide range of realistic road and weather scenarios in a concentrated and fully-instrumented and professionally-operated test facility. The facility may include the following environments and facilities:

- High Speed divided highway, with overpasses and tunnels
- Urban Area, with roads, traffic lights, building facades, pedestrians, etc.
- Commercial Area, with retail, industrial, and freight configurations
- Suburban/Residential, residential roads, mixed traffic environment and pedestrian
- Rural area, with rural roads, curves, elevation changes, and railroad crossings
- Off-Road, with gravel and dirt road surfaces with vegetation & water features
- User-Defined specialized testing with configurable open slab testing space
- User Campus, with shop, garage, office, and convening space

8. The Parties agree to undertake all actions required by the terms and conditions of this Settlement Agreement. The purpose of this Settlement Agreement is to settle and resolve, subject to reservations and limitations contained herein in Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), and IX (Reservation of Rights), the potential liability of the Settling Parties for the Existing Contamination at the Site which could otherwise result from the Settling Parties' purchase of and operation at the Site.

9. The Parties agree that the Settling Parties' entry into this Settlement Agreement, and the actions undertaken by the Settling Parties in accordance with the Settlement Agreement, do not constitute an admission of any liability by the Settling Parties. The resolution of any potential liability of the Settling Parties in exchange for the provisions and obligations undertaken by the Settling Parties in this Settlement Agreement is of a substantial benefit to EPA and is deemed to be in the public interest. The obligations of the Settling Parties are joint and several.

## **II. DEFINITIONS**

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA and/or RCRA, or in regulations promulgated under CERCLA and/or RCRA, shall have the meaning assigned to them in CERCLA and/or RCRA or in such regulations, including any amendments thereto.

a. "ACM" shall mean the American Center for Mobility, a Michigan non-profit corporation.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601-9675.

c. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XV (Effective Date).

e. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments, agencies, or instrumentalities.

f. "Existing Contamination" shall mean:

- i. any hazardous substances, pollutants, or contaminants or Waste material present or existing on or under the Site as of the Effective Date of this Settlement Agreement;
- ii. any hazardous substances, pollutants, or contaminants or Waste material that migrated from the Site prior to the Effective Date of this Settlement Agreement; and
- iii. any hazardous substances, pollutants, or contaminants or Waste material presently at the Site that migrate onto, under, or from the Site after the Effective Date of this Settlement Agreement.

g. "General Motors Consent Decree" shall mean the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, fourteen States, and the Saint Regis Mohawk Tribe, entered in *In re: Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York on March 31, 2011, a copy of which is attached as Appendix 1.

h. "Lessee" shall mean the American Center for Mobility ("ACM").

i. "MDEQ" shall mean the Michigan Department of Environmental Quality and any of its successor departments or agencies.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an

Arabic numeral or a lower case letter.

k. "Parties" shall mean the United States, the Lessee and the Purchaser.

l. "Purchaser" shall mean the Willow Run Arsenal of Democracy Landholdings Limited Partnership ("WRAD").

m. "RACER" or "RACER Trust" shall mean the Revitalizing Auto Communities Environmental Response trust established by the United States Bankruptcy Court in 2011 and formed under the laws of the State of New York to clean up and position for redevelopment properties and other facilities that were owned by the former General Motors Corp. before General Motors Corp.'s bankruptcy in 2009.

n. "RACER Properties LLC" shall mean the Delaware limited liability company and wholly owned affiliate of the RACER Trust, and current owner of the Site.

o. "RCRA" shall mean the Solid Waste Disposal Act of 1976 (also known as the Resource Conservation and Recovery Act), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901-6992(k).

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Settlement Agreement" shall mean this Settlement Agreement and Covenant Not to Sue and all appendices attached hereto (listed in Section XVIII of this Settlement Agreement). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "Site" shall mean the Willow Run Powertrain Site at 2930 Ecorse Road in Ypsilanti, Michigan, encompassing approximately 313 acres and as depicted in Appendix 2 of the Settlement Agreement.

s. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities, including EPA.

t. "Waste material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

u. "WRAD" shall mean the Willow Run Arsenal of Democracy Landholdings Limited Partnership, a Michigan limited partnership.

### **III. STATEMENT OF FACTS**

11. The Site that is the subject of this Settlement Agreement is a part of the previously operating General Motors Corporation North American Operations, at 2930 Ecorse Road in Ypsilanti, Michigan, known as the Willow Run Powertrain Site.

12. In June 2009, the former General Motors Corporation ("General Motors Corp.") filed for Chapter 11 reorganization bankruptcy and subsequently emerged as two new companies. The first of these two new companies, General Motors LLC, purchased the "General Motors" name and certain assets of General Motors Corp. and now operates automobile manufacturing plants in Michigan, Ohio, Indiana, Illinois, and Wisconsin. The second company, Motors Liquidation Company ("MLC"), retained all of the assets that General Motors LLC did not purchase, as well as the liabilities. This included many properties, including the Site.



13. In March 2011, the bankruptcy court approved MLC's plan of liquidation ("Plan"). On the effective date of the Plan, 89 sites were placed into an Environmental Response Trust (the "Trust") administrated by RACER, as defined in Section II, above. Pursuant to the terms of the Plan and the Trust, specific amounts of funds were set aside for each property in the Trust to address environmental contamination at the specific property. RACER has worked and currently works with Federal and State environmental agencies to review, approve, and undertake response actions to address the contamination at each property, including the Willow Run Powertrain Site. MDEQ is the lead agency for the Willow Run Powertrain Site and has overseen and will continue to oversee the work conducted by RACER until completion. EPA is the secondary agency and also conducts oversight of the work being conducted by RACER at the Site.

14. The Site consists of approximately 313 acres of land surrounded by industrial, commercial, and residential development. This Site originally was developed by Ford Motor Company to manufacture B-24 bombers during World War II. After the war, the plant was purchased by Kaiser-Frazer to produce automobiles. During the Korean War, Kaiser-Frazer produced C-119 and C-123 planes, before ceasing operations in 1953. General Motors purchased the property in late 1953 for the manufacture of automobile transmissions. Operational activities at the plant included machining, cleaning and painting and assembly of metal parts and products, as well as transmission assembly. GM stopped production at the property in 2010.

15. In the 1980s, General Motors became aware of oil accumulating under portions of the buildings. Subsequently, environmental investigations and remediation work began, including

the installation of soil borings, monitoring wells and recovery systems around the Site. Recovery systems were installed in the 1980s and 1990s to capture the light non-aqueous liquid (LNAPL), or oil-like liquids, that had accumulated under approximately a quarter of the main Site building. Since 2000, several investigations including LNAPL evaluations, subsurface utility evaluations, remedial investigations, perimeter monitoring, and hydrogeologic studies have been conducted on Site. Ongoing monitoring activities throughout the Site include groundwater and LNAPL measurements and periodic groundwater sampling events. From 2002 to 2007 several interim measures were operated and maintained and others decommissioned as required. From 2007 to 2011, response activities were limited to eight skimmer pump recovery systems in various wells across the Site. Many were decommissioned and removed in subsequent years.

16. The Site is currently owned by RACER Trust who is not currently conducting business operations at the Site.

17. RACER has and is performing additional investigation activities at the Site under the oversight of the Michigan Department of Environmental Quality (MDEQ).

18. In 2011, RACER conducted a review of the completed investigation and cleanup activities, which included soil, groundwater, LNAPL, and soil vapor, with a focus on completing the investigation and designing final, long term remedial solutions. In July 2011, RACER submitted an updated Current Conditions Report summarizing the field characterization work and interim measures implemented at the site. A Conceptual Site Model developed for the site led to the recommendation to install a long term groundwater collection and treatment system to confine residual non-migrating and stable LNAPL to the site and under the concrete slab serving

as a long term cap over the LNAPL area. The groundwater collection system will be designed to prevent contaminated groundwater from moving off-site and remove LNAPL to the extent possible. Contaminated groundwater will be treated and discharged either off site, or through an on-site infiltration gallery. A constructed wetland system, designed to treat LNAPL and residual contaminants for 50 to 100 years, is being considered for the property.

19. In 2013, RACER began the decommissioning and demolition of most of the Site buildings, which was completed in 2015. RACER will conduct additional building demolition in conjunction with the sale of the property. The buildings remaining on the property are (i) structures associated with ongoing groundwater treatment; (ii) the southeast corner of the original plant that will become the home of the National Museum of Aviation and Technology at Historic Willow Run (a separately owned property); and (iii) a few existing structures ACM is considering repurposing for the Site development.

20. As of September 30, 2013, a site wide deed restriction has been recorded to limit land uses to nonresidential, to prohibit use of the groundwater, to impose an obligation on the Settling Parties and any other new purchaser to address, as necessary, any possible vapor intrusion issues and to ensure all soils are properly managed. Additional deed restrictions are required at the former powerhouse, and electrical substation known as KK7, to protect from exposure to residual PCBs left on site. When all remedy elements are approved by MDEQ, a supplemental deed restriction will be recorded to secure the final remedial measures including the groundwater collection and treatment system and related monitoring systems.

21. The Settling Parties represent and, for the purposes of this Settlement Agreement, EPA relies on the Settling Parties' representation that neither has had any direct involvement in any prior use, contamination, or remediation of the Site.

#### **IV. SETTLEMENT AGREEMENT**

22. Based on the General Motors Consent Decree, the work that has been and is being conducted by RACER pursuant to the Plan, and in consideration of and exchange for the United States' Covenant Not to Sue in Section VIII of this Settlement Agreement, the Settling Parties agree to comply with all provisions of this Settlement Agreement, including, but not limited to, Sections V (Access/Cooperation), VI (Due Care), and VII (Certification) of this Settlement Agreement, and Paragraph 73 of the GM Consent Decree, which is attached as Appendix 1.

23. Nothing in this Settlement Agreement would require the Settling Parties to undertake any on-going or planned response actions at the Site that are funded by and/or undertaken by RACER, so long as the Settling Parties comply with the requirements of Sections V (Access/Cooperation) and VI (Due Care).

#### **V. ACCESS/COOPERATION**

24. Commencing upon the date that Purchaser WRAD acquires title to the Site, the Settling Parties shall provide access to the Site that will include the right of EPA and MDEQ, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or MDEQ's oversight and/or under direction of EPA or MDEQ, to an

irrevocable right of access at all reasonable times to the Site and to any property to which access is required for the implementation of the response action at the Site, to the extent such other property is controlled by the Settling Parties, for the purposes of performing and overseeing response actions at the Site. EPA and MDEQ agree to provide reasonable notice to the Settling Parties of the timing of their own actions to be undertaken at the Site. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

25. The Settling Parties shall comply with any and all land use restrictions and institutional controls on the Site. If the Site is transferred to the Purchaser WRAD before RACER has finalized all necessary restrictive covenants, Purchaser WRAD shall file with Washtenaw County and/or other appropriate units of government all required deed notices and restrictive covenants developed and required by EPA. These restrictions will include limiting land uses to non-residential, prohibiting use of the groundwater except as otherwise authorized in the restrictive covenant, imposing an obligation on the Settling Parties and any other new purchaser to address, as necessary, any possible vapor intrusion issues, and requiring no disturbing of any cover of contaminated soil left in place on Site unless replaced with an equivalent cover and any contaminated soil is properly managed.

26. The Settling Parties shall ensure that assignees, successors in interest, lessees, and sublessees of the Site shall provide the same access and cooperation, including implementing institutional controls. Further, the Settling Parties shall ensure that a copy of this Settlement Agreement is provided to any current lessees or sublessees on the Site as of the Effective Date

and shall ensure that any subsequent leases, subleases, assignments, or transfers of the Site or an interest in the Site are consistent with this Section and Section XI (Parties Bound).

## **VI. DUE CARE**

27. The Settling Parties shall exercise due care at the Site with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations, and all applicable land use restrictions and institutional controls. If the Settling Parties, their contractors and/or subcontractors encounter any Existing Contamination during their construction and/or operations on the Site, it/they must handle, excavate, and dispose of any encountered Existing Contamination in accordance with all applicable federal and State law. Prior to taking any action with regard to Existing Contamination, the Settling Parties shall notify EPA and MDEQ. If a new building is constructed on the Site, the Settling Parties will either install a vapor mitigation system in the new building or undertake an investigation to determine that no such system is needed. The Settling Parties shall notify EPA and MDEQ of the option implemented at the new building.

28. In the event the Settling Parties become aware, after the Effective Date, of any action or occurrence which causes or threatens a release of Waste material at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, and such action or occurrence is not being addressed with funds from the Trust, the Settling Parties shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. In the event that the Settling Parties fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead,

the Settling Parties shall be liable to reimburse EPA all costs of the response action not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. 300. Further, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, regardless of the cause of the release, the Settling Parties will immediately notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, as well as the EPA contacts listed in Section XIV (Notices and Submissions) of this Settlement Agreement, of any release at the Site of which they become aware.

29. Nothing in the preceding Paragraphs or in this Settlement Agreement shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, subject to Section VIII of this Settlement Agreement (United States' Covenant Not to Sue).

30. The Settling Parties agree to cooperate fully with EPA and MDEQ in the implementation of response actions, corrective action, and environmental monitoring at the Site under the terms, provisions, and limitations set forth in the General Motors Consent Decree. The Settling Parties further agree not to interfere with such activities. The Settling Parties recognize that the implementation of response actions at the Site may interfere with the use of the Site. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Parties' operations by such entry and activities.

31. The Settling Parties shall not treat, store, or dispose of Waste material at the Site, or release or cause the release of such Waste material on, to, or from the Site, except in compliance with applicable law.

## **VII. CERTIFICATION**

32. By entering into this Settlement Agreement, the Settling Parties certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to the Settling Parties and all information in the possession or control of their partners, officers, directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of Waste material at or from the Site and to its qualification for this Settlement Agreement. The Settling Parties also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of Waste material at the Site. If the United States determines that information provided by the Settling Parties is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the United States, shall be null and void, and the United States reserves all rights it may have.



### **VIII. UNITED STATES' COVENANT NOT TO SUE**

33. Subject to the Reservation of Rights in Section IX of this Settlement Agreement, the United States covenants not to sue or take any other civil or administrative action against the Settling Parties for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Sections 3008(h) or 7003 of RCRA, 42 U.S.C. §§ 6928(h) or 6973, with respect to the Existing Contamination. These covenants not to sue extend only to the Settling Parties and do not extend to any other person except as provided in Section XI of this Settlement Agreement (Parties Bound/Transfer of Covenant).

### **IX. RESERVATION OF RIGHTS**

34. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII of this Settlement Agreement (United States' Covenant Not to Sue). The United States reserves, and the Settlement Agreement is without prejudice to, all rights against the Settling Parties with respect to all other matters, including but not limited to the following:

(a) liability for a failure by the Settling Parties to meet a requirement of this Settlement Agreement, including but not limited to Section V (Access/Cooperation), and Section VI (Due Care) of this Settlement Agreement;

(b) any liability resulting from future releases of Waste material, at or from the Site caused or contributed to by the Settling Parties, their successors, assignees, lessees, or sublessees;

(c) any liability resulting from the exacerbation by the Settling Parties, their successors,

assignees, lessees, or sublessces of Existing Contamination;

(d) any liability resulting from the release or threat of release of Waste material at the Site after the Effective Date of this Settlement Agreement that is not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment; and

(g) liability for violations of local, State, or federal law or regulations.

35. With respect to any claim or cause of action asserted by the United States, the Settling Parties shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

36. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation, or other entity not a party to this Settlement Agreement.

37. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Parties to perform or pay for response actions at the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be

required by EPA in exercising its authority under federal law. The Settling Parties acknowledge that they are purchasing/operating on the Site where response actions may be required.

**X. THE SETTLING PARTIES' COVENANT NOT TO SUE**

38. In consideration of the United States' Covenant Not To Sue in Section VIII of this Settlement Agreement, the Settling Parties hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Settlement Agreement, including but not limited to, any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law; any claim against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; Section 7002(a) of RCRA; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

39. The Settling Parties reserve, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Parties' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

40. Except as provided in this Section, the Settling Parties reserve the right to assert any defenses available to them under applicable law.

#### **XI. PARTIES BOUND/TRANSFER OF COVENANT**

41. This Settlement Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Parties, their officers, directors, and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVII of this Settlement Agreement shall apply to the Settling Parties and their officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee is based on his/her status and in his/her capacity as an officer, director, or employee of the Settling Parties, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Parties. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

42. Notwithstanding any other provisions of this Settlement Agreement, all of the rights, benefits and obligations conferred upon the Settling Parties under this Settlement Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

43. Upon completion of the following conditions, a Transferee of all or a portion of the Site shall have all rights, duties and obligations of this Settlement Agreement, including Sections V

(Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), IX (Reservation of Rights), X (Settling Parties' Covenant Not to Sue), and XIII (Document Retention):

- a. at least five (5) days before the transfer, the Transferee submits to EPA an affidavit in substantially the same form as that attached as Appendix 3, which identifies the Transferee and the Site to be transferred, describes the proposed transfer, and certifies that:
  - i. prior to the Transfer, the Transferee was not and/or is not subject to potential liability under CERCLA, RCRA, and/or any other law for Existing Contamination;
  - ii. the Transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;
  - iii. the Transferee's use of the Site (or part of the Site, as the case may be) will not result in a release or threat of release of any Waste material except in compliance with law;
  - iv. the Transferee's use of the Site (or part of the Site, as the case may be) will not cause or contribute to the migration or new release of any Existing Contamination or any new threat to human health or the environment caused by any such release or threat of release;
  - v. the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the Transferee; and
  - vi. the Transferee is bound by all of the requirements, duties, obligations, and limitations on the use of and actions at the Site set forth in this Settlement Agreement.

b. EPA must consent in writing to the transfer of the rights, benefits, and obligations conferred under the Settlement Agreement to the Transferee. Any transfer of rights is subject to review and approval by EPA and shall not be effective until such approval is given. EPA agrees that it shall issue such approval, addressed to both the Settling Parties and the Transferee, promptly upon receipt of each Transferee's affidavit that conforms with the requirements of this Section XI (Parties Bound/Transfer of Covenant); and

c. Prior to or simultaneous with the transfer of all or a portion of the Site, the Transferee consents in writing to be bound by and perform, from the date of transfer, all of the terms and remaining obligations of the Settlement Agreement applicable to the Settling Parties or the applicable transferor.

If the Transferee's affidavit is not materially accurate or complete, or the Transferee fails to meet the obligations and requirements of this Settlement Agreement, the United States' covenants not to sue in Section VIII shall be null and void with respect to the Transferee, and the United States reserves all rights it may have against the Transferee.

44. If all conditions in Paragraph 43 are satisfied, upon transfer of ownership of the Site (or part of the Site, as the case may be), the Settling Parties shall be released from the obligations set forth in this Settlement Agreement with respect to the Site or the portion of the Site transferred.

## **XII. DISCLAIMER**

45. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

## **XIII. DOCUMENT RETENTION**

46. The Settling Parties agree to retain and make available to EPA all Site studies and investigations and documents relating to operations at the Site, for at least ten years, following the Effective Date of this Settlement Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Parties shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

## **XIV. NOTICES AND SUBMISSIONS**

47. Documents that must be submitted under this Settlement Agreement shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Settling Parties and EPA designate in writing:

As to EPA:

Greg Rudloff  
Remediation and Reuse Branch  
Land and Chemicals Division  
United States Environmental Protection Agency  
77 West Jackson Blvd., mail code: LU-9J  
Chicago, Illinois 60604-3590  
Phone: (312) 886-0455  
E-mail: [Rudloff.gregory@epa.gov](mailto:Rudloff.gregory@epa.gov)

Peter Felitti  
Assistant Regional Counsel  
United States Environmental Protection Agency  
77 West Jackson Blvd., mail code: C-14J  
Chicago, Illinois 60604-3590  
Phone: (312) 886-5114  
FAX: (312) 692-2495  
E-mail: [felitti.peter@epa.gov](mailto:felitti.peter@epa.gov)

As to the Purchaser Willow Run Arsenal of Democracy

Willow Run Arsenal of Democracy  
Landholdings Limited Partnership,  
Attention: Charles Fiedler, President  
3948 Hunters Ridge Drive #4  
Lansing, MI 48911-1136

Paul Collins, Attorney  
Miller Canfield  
One E. Michigan Ave., Ste. 900  
Lansing, MI 48933  
(517) 483-4908  
[collinsp@millercanfield.com](mailto:collinsp@millercanfield.com)

As to the Lessee American Center for Mobility

American Center for Mobility,  
John Maddox, Chief Executive Officer  
201 S. Division Street, Ste. 430  
Ann Arbor, MI 48104

David Parsigian  
Honigman  
315 East Eisenhower Parkway  
Ste. 100  
Ann Arbor, MI 48108  
(734)418-4200  
[dparsigian@honigman.com](mailto:dparsigian@honigman.com)

#### **XV. EFFECTIVE DATE**

48. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Settling Parties that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.



#### **XVI. TERMINATION**

49. If any Party believes that any or all of the obligations under Section V (Access/Cooperation) are no longer necessary to ensure compliance with the requirements of the Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

#### **XVII. CONTRIBUTION PROTECTION**

50. With regard to claims for contribution against the Settling Parties, the Parties hereto agree that this Settlement Agreement is an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

51. The Settling Parties agree that with respect to any suit or claim for contribution brought by them for matters related to this Settlement Agreement, they will notify the United States in

writing no later than 60 days prior to the initiation of such suit or claim.

52. The Settling Parties also agree that with respect to any suit or claim for contribution brought against them for matters related to this Settlement Agreement, they will notify in writing the United States within 10 days of service of the complaint on them.

#### **XVIII. APPENDICES**

53. a. Appendix 1 is the General Motors Consent Decree, as defined in Section II.
- b. Appendix 2 is a map of the Site, as defined in Section II.
- c. Appendix 3 is a copy of the Transfer Affidavit, as described in Section XI.


#### **XIX. PUBLIC COMMENT**

54. This Settlement Agreement shall be subject to notice in the Federal Register and a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate this Settlement Agreement is inappropriate, improper, or inadequate.

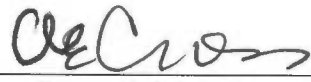
IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

  
\_\_\_\_\_  
Thomas A. Mariani, Jr. 09-21-2016  
Section Chief Date  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

BY:

  
\_\_\_\_\_  
Anna Cross, Trial Attorney 9/21/16  
Date  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Douglas Ballon  
Acting Director  
Superfund Division  
U.S. EPA Region 5

9/8/2016  
Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Margaret M. Guerriero  
Director  
Land and Chemicals Division  
U.S. EPA Region 5

9/8/2016  
Date

**IT IS SO AGREED:**

BY: Charles A. Fiedler 7/29/16  
Charles A. Fiedler, President      Date  
Willow Run Arsenal of Democracy Landholding  
Limited Partnership  
Willow Run Land Management Services, its General  
Partner

BY:

John Maddox, President                           Date  
American Center for Mobility

IT IS SO AGREED:

BY:

\_\_\_\_\_  
Charles A. Fiedler, President                      .Date  
Willow Run Arsenal of Democracy Landholding  
Limited Partnership  
Willow Run Land Management Services, its General  
Partner

BY:

A handwritten signature in black ink, appearing to be 'JM', with a long horizontal line extending to the right.

\_\_\_\_\_  
John Maddox, Chief Executive Officer  
Date: July 29, 2016  
American Center for Mobility